**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION.**

**FIRST APPEAL NO.1150 OF 1991**

Union of India & Anr. : Appellants.

versus

M/s.Cummins Diesel Sales

& Service India Ltd. & Anr. : Respondents.

Mr.A.N.Samant for the appellants.

None for the respondents.

**CORAM : D.G.DESHPANDE,J.**

**DATED : 24th August 2005.**

**ORAL ORDER**

1. Heard Mr.Samant, the learned counsel appearing for the appellants. Respondents are served. Nobody is present for them. Mr.Samant mainly contended that the tribunal has passed the decree against two railways i.e. Central Railway and Eastern Railway. He drew my attention to Section 107 of the Railways Act 1989 which lays down that "An application for compensation for loss, destruction, damage, deterioration or

non-delivery of goods shall be filed against railway administration on whom a notice under section 106 has been served". Mr.Samant contended that even as per the allegations in the plaint, no such notice has been served upon the central railway and, therefore, there cannot be decree against the central railway and, so far as eastern railway is concerned, even though the notice is served, the tribunal had no jurisdiction to pass a decree against the eastern railway. I have up held this contention raised by Mr.Samant in another appeal being First Appeal NO.248 of 1993 decided on 17th February 2005. That was done by me on the basis of the Judgment of Single Bench (Justice T.D.Sugla) in **Civil Revision Application No.287 of 1988 [Union of India v/s. M/s.National Insurance Co. Ltd. & ors.]** decided on April 20, 1989. Since this objection goes to the very root of the matter, it is not necessary to consider other objections or challenges to the decree raised by Mr.Samant. Consequently, the appeal has to be allowed. Hence I pass the following order :-

:ORDER:

The appeal is allowed. The impugned judgment and decree is set aside.

The Claim Petition filed by the respondents is dismissed.

No order as to costs.

If the amount is deposited by the appellants pursuant to the impugned judgment and decree, the same shall be returned to them.

**[D.G.DESHPANDE,J]**